

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 06-54652

KENNETH M. JOHNSON, *pro se*,

Chapter 7

Debtor.

Judge Thomas J. Tucker

**ORDER DENYING DEBTOR'S MOTION AND REQUEST TO EXTEND THE FILING
OF A CREDIT COUNSELING CERTIFICATE, AND DISMISSING CASE**

This case came before the Court on Debtor's "Motion And Request To Extend The Filing Of A Credit Counseling Certificate Missing Document Forwith [sic] Within A 30 Days For Good Cause," filed on October 25, 2006 (Docket # 17). The Court construes this motion as certification of exigent circumstances under 11 U.S.C. § 109(h)(3), but must deny this motion, for the following reasons.

First, the motion is untimely. Section 109(h)(1) of the Bankruptcy Code provides:

Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

11 U.S.C. § 109(h)(1). Section 109(h)(3)(A), in turn provides:

(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

(I) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

(iii) is satisfactory to the court.

11 U.S.C. § 109(h)(3)(A). L.B.R. 1007-3(a) (E.D.M.) requires a debtor to file a certification of exigent circumstances under 11 U.S.C. § 109(h)(3)(A), and a motion for approval of the certification, with the petition. Thus, L.B.R. 1007-3(a) required Debtor to file a certification of exigent circumstance on October 12, 2006, when he filed he voluntary petition for relief under Chapter 7. Debtor did not file his motion until October 25, 2006.

Second, the motion fails to meet the requirements of § 109(h)(3)(A). Even if the motion had been timely filed, it would have been denied on this basis.

Because the Debtor has failed to meet the requirements of § 109(h)(1), he is not eligible to be a debtor in this case, and the case must be dismissed. Accordingly,

IT IS ORDERED that (1) Debtor's motion is denied; and (2) this case is dismissed, without prejudice to the Debtor's right to file a new bankruptcy case after he has obtained the credit counseling briefing required by 11 U.S.C. § 109(h)(1).

Date: October 29, 2006

/s/ Thomas J. Tucker

Thomas J. Tucker
United States Bankruptcy Judge